



OFFICE OF THE COUNTY ATTORNEY

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County Executive

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MEMORANDUM

TO: Joseph Adler, Director
Office of Human Resources

VIA: Marc P. Hansen
Deputy County Attorney

FROM: Edward B. Lattner
Associate County Attorney

DATE: April 10, 2006

RE: **CAO's Authority To Terminate An Appointed Official**

You have asked whether the County Executive can delegate to the CAO the authority to terminate an appointed official "by an administrative action" thereby permitting the official to seek a discontinued service pension and continuing health benefits. The County Executive can delegate that authority to the CAO because, while the County Executive appoints the head of each department and principal office, the Chief Administrative Officer supervises those appointees and performs other tasks that the County Executive assigns.

The Montgomery County Charter¹ and Montgomery County Code(2004)² authorize the County Executive to appoint the head of each department, principal office, and other non-merit position in the executive branch, subject to County Council confirmation. The Charter³ and the

¹ Charter § 215 states: "The County Executive, after receiving the advice of the Chief Administrative Officer, shall appoint a single officer to head each department, principal office or agency of the Executive Branch, and an officer to fill any position in the Executive Branch designated by law as a non-merit position, all subject to the confirmation of the Council."

² Montgomery County Code § 1A-102(a)(1) states: "The County Executive may appoint a new Chief Administrative Officer, County Attorney, head of a department or principal office, or other position in the Executive Branch designated by law as a non-merit position at any time."

³ Charter § 211 states: "The Chief Administrative Officer shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the Executive Branch, advise the County Executive on all administrative matters and perform such other duties as may be assigned by the County Executive, or by this Charter."

Code⁴ also provide that the CAO, subject to the direction of the County Executive, supervises all departments and offices in the executive branch and performs such other duties as may be assigned by the County Executive.

Historically, the transmission of decision making authority from the head of an agency to a subordinate was rejected by the court if the controlling law required the decision to be made by a specified officer. 1 K. Davis, *Administrative Law Treatise* § 2.7 (3rd ed.). But, according to Davis, the practicalities of government administration has forced courts to accept delegation within administrative agencies. The complexity of administering executive branch agencies necessitates delegation of functions and authority within the agency; this delegation has become a common feature in modern government. 2 Am.Jur.2d, Administrative Law, § 221.

Where provided by law, a public official can delegate authority to remove another employee. In *Easton v. The Rosewood Center*, 86 Md. App. 366, 586 A.2d 804 (1991), the court concluded that the Secretary of Personnel could delegate her authority to remove a classified state employee. State law specifically authorized the Secretary of Personnel to delegate to another final approval authority for removal decisions by publishing notice of that delegation in the Maryland Register. The Secretary published notice that she was delegating her authority to the Personnel Administrator. The court upheld that delegation as valid and lawful.⁵

County law provides that the CAO performs such other duties as the County Executive assigns. Although this delegation of authority is not as specific as the personnel delegation at issue in *Easton*, it is reasonable that the County Executive could delegate authority to the CAO to terminate appointed officials in the executive branch, given that the CAO is already charged with responsibility for supervising those same officials.

Under certain circumstances, termination of a County employee entitles that employee to a discontinued service pension and other benefits. A member of the retirement system, including an appointed official,⁶ whose employment has been terminated by an administrative action may

⁴ § 1A-103(b) states that the duties of the CAO are to: “(4) Supervise the departments, offices, and agencies of the Executive Branch; and (5) Perform other tasks that the County Executive assigns.” Similarly, § 1A-202(b) states that “departments and principal offices are also subject to the general supervision of the County Executive and the Chief Administrative Officer.”

⁵ The court went on to conclude that the right to delegate implicitly includes the right to revoke that delegation and that the Secretary could overrule the Personnel Administrator’s decision when that decision was inconsistent with the Secretary’s policies. “In [delegating her authority], the Secretary did not surrender her right, indeed her obligation, to intervene and speak for herself when she disagrees with the judgment of her subordinate.” *Id.* at 374, 586 A.2d at 808.

⁶ The term “member” is defined as “an employee or official of the County government or of a participating agency or political subdivision who is contributing to this retirement system.” § 33-35 That section also defines an employee as “any eligible elected or appointed official and any full-time or [sic] career part-time employee of the

Joseph Adler
April 10, 2006
Page 3

elect a discontinued service pension as provided in § 33-45(d)(1).⁷ “A member who has been dismissed for cause or who has resigned is not eligible for a discontinued service pension.” § 33-45(d)(2).

If you have any questions, please feel free to call me.

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County, or of a participating agency or political subdivision.” Finally, § 33-37 provides that “each person appointed by the County Executive or County Council to head a department, office, or agency of the county government must be subject to all regulations and laws governing full-time members of the retirement system.”

⁷ Section 33-45(e) address the discontinued service benefits of an appointed official who is not reappointed.